



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-124791-11]

RIN 1545-BK37

Furnishing Identifying Number of Tax Return Preparer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on the eligibility of tax return preparers to obtain a preparer tax identification number (PTIN).

These proposed regulations expand the list of tax return preparers who may obtain and renew a PTIN. The proposed regulations additionally provide guidance concerning those tax forms submitted to the Internal Revenue Service that are considered returns of tax or claims for refund of tax for purposes of the requirement to obtain a PTIN and related provisions. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-124791-11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC

20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-124791-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-124791-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stuart Murray at (202) 622-4940; concerning submissions of comments and requests for a hearing, Oluwafunmilayo (Funmi) Taylor at (202) 622-7180 (not a toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to regulations under section 6109 of the Internal Revenue Code (Code) relating to the identifying number of a tax return preparer and furnishing a tax return preparer's identifying number on tax returns and claims for refund of tax. The Department of Treasury and the Internal Revenue Service published in the **Federal Register** on September 30, 2010 (75 FR 60309) final regulations under section 6109 that prescribe certain requirements relating to the identifying number of tax return preparers.

In particular, the final regulations provided that for tax returns or claims for refund of tax filed after December 31, 2010, the identifying number of a tax return preparer is a PTIN or other identifying number that the IRS prescribes in forms, instructions, or other guidance. The final regulations also provided that after December 31, 2010, a tax return preparer must have a PTIN that is applied for and renewed in the manner the IRS

prescribes. The final regulations added §1.6109-2(d) to the regulations under title 26, providing that to obtain a PTIN or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, or registered tax return preparer authorized to practice before the IRS under Treasury Department Circular No. 230, 31 CFR Part 10 (which Treasury and the IRS amended in final regulations published in the **Federal Register** on June 3, 2011 (76 FR 32286)). For purposes of these requirements, a tax return preparer means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. The final regulations under section 6109 additionally added §1.6109-2(f), which provides that the IRS may conduct a Federal tax compliance check on a tax return preparer who applies for or renews a PTIN or other prescribed identifying number.

Although the rules in the final regulations under section 6109 went into effect on January 1, 2011, §1.6109-2(h) allows Treasury and the IRS to prescribe, through forms, instructions, or other appropriate guidance, exceptions to the rules in §1.6109-2, as necessary, in the interest of effective tax administration. Section 1.6109-2(h) also provides that the IRS may specify through other appropriate guidance “specific returns, schedules, and other forms that qualify as tax returns or claims for refund for purposes of these regulations.”

After §1.6109-2 was amended, Treasury and the IRS issued Notice 2011-6 (2011 IRB 315 January 17, 2011) (see §601.601(d)(2)(ii)(b) of this chapter), which provides additional guidance on the implementation of §1.6109-2. Specifically, Notice 2011-6, in part, provides further guidance as to tax return preparers who may obtain a PTIN. As

explained in Notice 2011-6, the IRS “decided to allow certain individuals who are not attorneys, certified public accountants, enrolled agents, or registered tax return preparers to obtain a PTIN and prepare, or assist in the preparation of, all or substantially all of a tax return in certain discrete circumstances.” Pursuant to the authority in §1.6109-2(h), Notice 2011-6 established two additional categories of tax return preparers who may obtain a PTIN: (1) tax return preparers supervised by attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, and enrolled actuaries (see §1.02a of Notice 2011-6); and (2) tax return preparers who prepare tax returns not covered by a competency examination applicable to registered tax return preparers (see §1.02b of Notice 2011-6). Notice 2011-6 prescribes the requirements an individual must satisfy under each of these two categories, including passing a Federal tax compliance check and a suitability check (when available). Individuals who obtain or renew a PTIN under either of these categories are not registered tax return preparers. Registered tax return preparers are subject to separate, more extensive requirements in Circular 230, including continuing education.

Also pursuant to the authority in §1.6109-2(h), the IRS in Notice 2011-6 specified that all tax returns, claims for refund, and other tax forms submitted to the IRS are considered tax returns or claims for refund of tax for purposes of §1.6109-2 unless the IRS provides otherwise. Section 1.03 of Notice 2011-6 explains that the IRS interprets the term “tax forms” broadly for this purpose, and a tax return preparer must obtain a PTIN to prepare for compensation, or to assist in preparing for compensation, all or substantially all of “any form” except those forms that the IRS explicitly excludes. Notice 2011-6 lists the forms by number and title that are currently excluded.

Explanation of Provisions

Treasury and the IRS propose to incorporate the relevant provisions of Notice 2011-6 discussed earlier in this preamble in §1.6109-2. The proposed regulations provide for two additional categories of tax return preparers to obtain a PTIN (or other identifying number the IRS prescribes), namely, certain supervised tax return preparers and tax return preparers who prepare tax returns and claims for refund that are not covered by a competency examination. As to the first category, the proposed regulations provide that any individual 18 years of age or older is eligible for a PTIN if the individual is supervised as a tax return preparer by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230. The proposed regulations provide that the supervision must be in accordance with any requirements the IRS may prescribe; these requirements are currently set forth in §1.02a of Notice 2011-6.

As to the second category, the proposed regulations provide that any individual 18 years of age or older is eligible for a PTIN if the individual exclusively prepares tax returns and claims for refund that are not covered by any minimum competency test or tests that the IRS prescribes for registered tax return preparers. To be eligible for a PTIN, an individual must certify, at the time and in whatever manner the IRS may prescribe, that the individual only prepares tax returns and claims for refund that are not covered by a minimum competency test. Under the proposed regulations, the individual must also comply with any other eligibility requirements that the IRS may prescribe; these requirements are currently set forth in §1.02b of Notice 2011-6.

The proposed regulations provide that for purposes of §1.6109-2, the terms tax return and claim for refund of tax include all tax forms submitted to the IRS except forms that the IRS specifically excludes in other appropriate guidance. Notice 2011-6 (§1.03) is the current guidance specifying the excluded tax forms. The proposed regulations also amend §1.6109-2(f) to clarify that the IRS may conduct a suitability check, in addition to a Federal tax compliance check, on certain tax return preparers who apply for or renew a PTIN or other prescribed identifying number. This clarification is consistent with the provisions in both the final Circular 230 regulations and Notice 2011-6 stating that certain individuals who apply to obtain or renew a PTIN or to become a registered tax return preparer will be subject to a suitability check, as well as a tax compliance check.

Proposed Effective/Applicability Date

These regulations are effective on the date that final regulations are published in the **Federal Register**. For proposed dates of applicability, see §1.6109-2(i).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of

proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments that are submitted by the public will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Stuart Murray of the Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6109-2 also issued under 26 U.S.C. 6109(a) * * *

Par. 2. Section 1.6109-2 is amended by adding a new sentence to the end of paragraph (a)(1) and revising paragraphs (d), (f), (h) and (i) to read as follows:

§1.6109-2 Tax return preparers furnishing identifying numbers for returns or claims for refund and related requirements.

(a) * * * (1) * * * For purposes of this section only, the terms tax return and claim for refund of tax include all tax forms submitted to the Internal Revenue Service unless specifically excluded by the Internal Revenue Service in other appropriate guidance.

* * * * *

(d)(1) Beginning after December 31, 2010, all tax return preparers must have a preparer tax identification number or other prescribed identifying number that was applied for and received at the time and in the manner, including the payment of a user fee, as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance.

(2) Except as provided in paragraph (h) of this section, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be one of the following:

(i) An attorney;

(ii) A certified public accountant;

(iii) An enrolled agent;

(iv) A registered tax return preparer authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder;

(v) An individual 18 years of age or older who is supervised, in the manner the Internal Revenue Service prescribes in forms, instructions, or other appropriate guidance, as a tax return preparer by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder; or

(vi) An individual 18 years of age or older who certifies that the individual is a tax return preparer exclusively with respect to tax returns and claims for refund of tax that are not covered, at the time the tax return preparer applies for or renews the number, by a minimum competency examination prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance. An individual must comply with any requirements at the time and in the manner that the Internal Revenue Service may prescribe in forms, instructions, or other appropriate guidance.

* * * * *

(f) As may be prescribed in forms, instructions, or other appropriate guidance, the Internal Revenue Service may conduct a Federal tax compliance check and a suitability

check on a tax return preparer who applies for or renews a preparer tax identification number or other prescribed identifying number.

* * * * *

(h) The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration.

(i) Effective/applicability date. Paragraph (a)(1) of this section applies to tax returns and claims for refund filed after December 31, 2008, except the last sentence of paragraph (a)(1), which applies to tax returns and claims for refund filed on or after the date that final regulations are published in the **Federal Register**. Paragraph (a)(2)(i) of this section applies to tax returns and claims for refund filed on or before December 31, 2010. Paragraph (a)(2)(ii) of this section applies to tax returns and claims for refund filed after December 31, 2010. Paragraph (d)(1) of this section applies to tax return preparers after December 31, 2010. Paragraph (d)(2) of this section applies to tax return preparers on or after the date that final regulations are published in the **Federal Register**. Paragraph (e) of this section applies after September 30, 2010. Paragraph

(f) of this section applies on or after the date that final regulations are published in the **Federal Register**. Paragraphs (g) and (h) of this section apply after September 30, 2010.

Steven T. Miller
Deputy Commissioner for Services and Enforcement.